

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 50,)
Petitioner,)
)
v.) Public Case No. R 93-008
)
ST. CHARLES COUNTY HUMANE AND)
ENVIRONMENTAL SERVICES)
DEPARTMENT,)
)
Respondent.)

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Service Employees International Union, Local 50 of a petition for certification as public employee representative of certain employees of the St. Charles County Humane and Environmental Services Department. A hearing in the matter was held on January 19, 1993 in St. Charles, Missouri, at which representatives of the Union and the County were present. This case was heard by State Board of Mediation Chairman Mary L. Gant, employee member Donald Kelly, and employer member Pamela S. Wright. At the hearing, the parties were given full opportunity to present evidence. After a careful review of the evidence, the Board sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The St. Charles County Humane and Environmental Services Department oversees the two functions referenced in its title -- animal control and environmental services. Both of these functions are separate and distinct from the other. The animal control function deals with animal bite cases, stray and dangerous animals and operation of a

kennel. The environmental function involves regulation of the trash industry, enforcing the County's regulations on waste, operation of a recycling center, clean-up of roadside dumps, and public education. These two functions are divided into separate sections but share the same supervisor: Department Director John Carpenter. He is responsible for the direction of both job functions and sections. Each function is located at the same site: 2100 E. Pittman Avenue in Wentzville. Two buildings are located at that site about 200 feet apart. One is the kennel and the other is the recycling center. The animal control function is located at the kennel while the environmental services function is located at the recycling center. The reason these two functions are contained in the same department and located at the same site is that the County had land and offices available there for each and it decided to combine them into one department to make efficient use of resources. Plans are presently underway though to relocate the kennel from its current site to a more central location in St. Charles County. Insofar as the record shows, no county in Missouri other than St. Charles County combines these two functions in the same department.

The Animal Control/Humane Section

The primary objective of the Animal Control/Humane section is to protect the County's citizens against the spread or transmission of rabies. Seven people work in this section: the chief rabies control officer (Scott Green), four rabies control officers, a kennel manager and a kennel assistant. The rabies officers are essentially dog catchers who respond to emergency calls relating to animal bites, patrol for stray animals, and secure animals who bite for observation at the kennel. On a typical day, the rabies control officers report to the kennel at 8 am in county cars which they drive to and from work. Then they depart on patrol in their county car to a designated area for the remainder of the day. Calls are dispatched to them by radio. Around 4:00 p.m., the

rabies control officers return to the kennel, unload any animals they picked up, and assist in cleaning the kennel area. The rabies control officers are assigned on a rotating basis to respond to emergency calls after hours or on weekends. Emergency calls at such times are taken by the Sheriff's Department, who in turn contacts the rabies control officer on stand by. The rabies control officers are paid \$17,809 a year.

During the day, the kennel manager and kennel assistant remain at the kennel. The kennel manager is in charge of the kennel where animals are kept and euthanized. The kennel manager reports to the chief rabies control officer. The chief rabies control officer tells the kennel assistant what animals need to be put to sleep. The kennel assistant performs that task and also cleans, sweeps and mops the areas where dogs and cats are kept. The kennel assistant also shows animals to people and handles inquiries regarding lost pets. In the afternoon, the kennel manager and kennel assistant clean the outside kennel rooms. The kennel is not open on Saturday. The kennel manager makes \$18,120 a year and the kennel assistant makes \$17,809 a year.

Neither the kennel personnel nor the rabies control officers perform any work at the recycling center. As a result, there is no regular work interaction or work contact between recycling center employees and kennel personnel. Kennel employees are not even allowed to be at the recycling center.

When a replacement is needed in the kennel because the kennel manager or kennel assistant is absent, the chief rabies control officer advises Carpenter of same. Carpenter then contacts recycling center director Reddick to see whether Reddick's assistant (David Shanks) is available to work in the kennel. If Reddick decides that Shanks cannot be relieved from his recycling center duties at that time, the chief rabies control officer calls a rabies control officer off patrol to work in the kennel. On two separate occasions, Green wanted to use Shanks at the kennel but Reddick could not

spare him from the recycling center. Shanks has never filled in for an absent rabies control officer. Except for the times Shanks' worked at the kennel, there is no regular interchange of employees between the two sections.

The Environmental Services Section

The Environmental Services section is responsible for recycling, solid waste management, roadside clean-ups, code enforcement, public education and regulation of the trash industry. The recycling function is performed at the recycling center. County residents drop off their unwanted material there where it is separated, packaged and ultimately sent off for disposal.

Four employees work in this section: an environmental code enforcement officer, a public education director, a recycling center director, and his assistant. According to the employer's organizational chart, all these employees except the recycling director's assistant operate under the supervision and control of the solid waste manager, who, in turn, reports to Carpenter. As of the time of the hearing though, the solid waste manager position was vacant. This vacancy was created when Carpenter was promoted to Department Director six months ago. As a result of that vacancy, the environmental code enforcement officer, the public education director, and recycling center director presently report to Carpenter directly. Additionally, the assistant to the recycling center director (Shanks) reports to Carpenter on Mondays because Reddick is off that day.

The public education director, Mary Holiday, is responsible for educating the public and increasing public awareness regarding recycling, environmental concerns and solid waste management. She spends the majority of her time speaking to schools and community groups on these topics. She does not spend any of her time at the recycling center.

The code enforcement officer, Tom Wagner, similarly spends most of his time away from the recycling center although he works there on occasion. His job title is also known as the assistant solid waste manager. His job involves enforcing code violations and patrolling the county to identify roadside dumps for clean-ups. He also addresses citizens' complaints regarding trash.

David Shanks, whose actual job title is truck driver/laborer, does all the physical duties which are performed at the recycling center. These include baling and moving recycled paper and plastic, crushing and moving glass, tin and aluminum cans, monitoring and moving oil and batteries and operating a fork lift. He also cleans up the roadside dump sites along county roads which are identified by the code enforcement officer. When he does so he operates a specially modified boom- truck to pick up waste materials. He also performs maintenance work on recycling center equipment. Shanks reports daily to the recycling center and receives his work assignments from Reddick. Shanks has also worked in the kennel as a substitute nine or ten times in the four months he has worked in the Department. By his guess, he works at the kennel one day every two weeks. As a probationary employee, Shanks is paid \$16,800 a year. When he goes off probation after six months of employment, he will be paid the same salary as Reddick (\$17,809 a year).

Reddick, the recycling center director, oversees the entire recycling operation. He works all day at the recycling center. He performs the same physical duties as Shanks, except that he does not go out on the road to clean dump sites. Additionally, Reddick is responsible for notifying the container company to pick up full containers, preparing log entries documenting materials shipped from the recycling center, and monitoring and controlling the flow of recycled materials through the facility. He spends about 10% of his time doing this paper work. Reddick also oversees Shanks and the work he

performs. Requests for Shanks to work at the kennel operation or to pick up waste at dumping sites are channeled through Reddick, who determines whether Shanks can be spared from the recycling center. Carpenter does not overrule Reddicks' decisions concerning Shanks' availability to operate the boom-truck in the field or fill in at the kennel.

Reddick has not hired, fired or disciplined anyone, or authorized any overtime. Reddick has given preliminary approval to Shanks' vacation and personal leave requests, which were then submitted to Carpenter for his approval. Sometime in 1993 Reddick will be responsible for preparing a performance appraisal report on Shanks. This evaluation will determine whether Shanks is properly performing his duties. When Shanks was hired four months ago, Reddick taught him how to do the work.

CONCLUSIONS OF LAW

There are two issues to be decided in this case: 1) the appropriateness of the proposed bargaining unit; and 2) whether the recycling center director is a supervisor. Each of these issues will be addressed below.

The Union has petitioned for an election among "all animal control officers, kennel maintenance and environmental control officers." The Union's proposed bargaining unit would include all seven of the employees in the Animal Control/Humane section and two of the four employees in the Environmental Services section. The two environmental services employees included in the Union's proposed unit are the recycling center employees and those excluded from the Union's proposed unit are the code enforcement officer and the public education director. The Employer contends the Union's proposed unit is inappropriate. In the Employer's view, the two recycling center employees have no community of interest with the employees in the Animal Control/Humane section and therefore should not be included in a bargaining unit with

them. According to the Employer, only the Animal Control/Humane section employees should be included in a bargaining unit.

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1986 wherein it provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest" nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in AFSCME, MO State Council 72 v. Department of Corrections and Human Services, Case No. 83-002 (SBM 1984), and other cases, include:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours or work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.

10. History of collective bargaining.
11. Extent of union organization.

Generally, no one factor in and of itself is determinative in making this call. Instead, all are weighed together.

Before applying the above-stated factors to the facts of this case, it is noted at the outset that this Board is not required to decide which proposed unit is "the" appropriate unit or "the most" appropriate unit. Instead, our duty in all election cases is to decide whether a proposed unit is "an" appropriate unit. City of Poplar Bluff, Case No. 90-030 (SBM, 1990) and Curators of the University of Missouri, d/b/a KOMU-TV, Case No. 86-013 (SBM, 1986). The distinction is obviously important because it means that the Petitioner does not have to request an election in the most appropriate unit that could be envisioned, either by the parties themselves or this Board.

Having so found, attention is now turned to the application of the above-stated factors to this case. After applying them, we find that the Union's requested unit does not qualify as an appropriate unit. Our rationale follows. While the animal control employees and the recycling center employees are included in the same overall department and are under the ultimate supervision of the same person (Department Director Carpenter) and have similar salaries, in our opinion that is all they have in common. To begin with, they have different job functions and duties. The five rabies control officers spend their time responding to animal bite cases and collecting stray or dangerous animals, which are then cared for by the two kennel employees. The rabies control officers perform these duties by patrolling in vehicles. As part of their job they are required to work emergency standby. In contrast, the two recycling center employees (the director and his assistant) operate the recycling center where they separate, package and dispose of recyclable material. Unlike the rabies control officers, neither of the recycling center employees are required to work emergency standby.

Next, the animal control employees and the recycling center employees work at different facilities which are physically separate, namely the kennel and the recycling center, respectively. While these two facilities are in close proximity to one another and are located at the same site, that is due to happenstance--nothing more. Insofar as the record shows, there is no shared or overlapping equipment, supplies or operations between the two facilities.

Next, the employees in the two sections are overseen by different individuals. The chief rabies control officer oversees the animal control and kennel employees while the recycling center director oversees Shanks. Neither individual has any control over employees outside their section.

Finally, the interchange between employees in the two sections of the department is minimal. The animal control employees never work in the recycling area. As a result, they have virtually no working contact with the recycling center employees. In fact, the animal control and kennel employees are prohibited from even being at the recycling center. Conversely, recycling center director Reddick has never worked in the kennel or as a rabies control officer. Shanks is the only environmental services employee who has worked in the animal control area. On average, he works in the kennel as a substitute worker once every two weeks. While Shanks work at the kennel shows some interchange between Shanks and the kennel employees, there is no interchange between Reddick and the animal control and kennel employees.

Given the facts noted above, specifically their different job functions and duties, different work facilities, different overseers and lack of interchange, we find that the animal control employees and the recycling center employees do not possess the requisite community of interest to be combined in the same bargaining unit. As a practical matter, the only interchange that occurs between the two groups of employees is that Shanks fills in at the kennel as a borrowed worker once every two weeks or so.

This limited interchange is not sufficient though to warrant including the recycling center employees in the same unit as the animal control employees.

Having found that the Union's proposed bargaining unit is inappropriate we now turn to the question of what unit is appropriate. We find based on the record before us that two units are appropriate: a unit of animal control employees and a unit of environmental services employees. Those eligible for inclusion in the animal control bargaining unit are the chief rabies control officer, the rabies control officers, the kennel manager and the assistant kennel manager. Those eligible for inclusion in the environmental services bargaining unit are the code officer, the public education director and the driver/laborer.¹ The status of the recycling center director (Reddick) is still in issue and will be addressed next.

As noted above, the remaining issue is whether the recycling center director should be included in the environmental services bargaining unit. The Employer contends he should not be included based on his supervisory status, while the Union disputes this assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since the Employer contends that the recycling center director is a supervisor, it is necessary for us to determine if such is, in fact, the case.

In making this decision, this Board has historically considered the following factors:

¹ The Employer acknowledged in their brief that these three employees were non supervisory.

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees;
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees;
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees;
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.²

We will apply them here as well. Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

Applying these criteria to the recycling center director, we conclude that on balance he does not meet this supervisory test. Our analysis follows.

There is no question that Reddick is in charge of the recycling center and oversees its day-to-day operation. In this capacity he monitors and controls the flow of recycled materials through the facility, notifies the container company to pick up full containers and makes log entries documenting materials shipped from the recycling center. He also does all the physical duties which are performed at the recycling center, namely, baling recycled paper and plastic products and crushing glass, tin and aluminum cans. In addition to these job duties Reddick also directs the work of Shanks, the only other

² See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

worker at the recycling center. Reddick oversees Shanks on a daily basis (except for Mondays because Reddick is off that day), assigns him work and ensures that he (Shanks) performs it. Reddick trained Shanks after he was hired and has signed his (Shanks') leave slips. Additionally, Reddick determines when Shanks can be released from his duties at the recycling center to fill in at the kennel.

Having said that, we find that Reddick is a leadworker who does not possess supervisory duties in sufficient combination and degree to be deemed a supervisor. One factor in reaching this conclusion is that he spends most of his time working side by side with Shanks doing the same hands-on work as Shanks' performs. Given Reddick's active involvement in performing routine recycling duties, we find that his oversight function over Shanks is incidental to his supervising the recycling activity itself.

Another factor is that Reddick has neither recommended nor performed any of the procedures listed in criteria (1) above. Specifically, he has not hired, fired, or disciplined anyone, transferred or promoted anyone or recommended a pay increase. Although Shanks was just hired four months prior to the hearing, Reddick had no role whatsoever in the hiring process. While Reddick has not evaluated anyone before, he has been told he will evaluate Shanks sometime this year. It is unclear though what weight this evaluation will play in terms of Shanks' future promotions or pay increases. Given the foregoing, we believe it clear that Reddick has no meaningful role in personnel matters.

Another factor affecting our decision concerns the level of pay, criteria (4) above. As of the time of the hearing, Reddick was being paid more than Shanks. However, once Shanks goes off probationary status (which was scheduled to occur two months after the hearing) he will receive a pay increase. At that point, both Reddick and Shanks will be paid exactly the same yearly salary. In our view, the Employer is hard pressed to

claim that Reddick supervises Shanks when, in point of fact, Reddick will not be paid more than Shanks.

Based on the above, it is our conclusion that Reddick has not been given sufficient supervisory authority in such combination and degree to warrant his being designated a supervisor. He is therefore included in the environmental services bargaining unit.

DECISION

It is the decision of the State Board of Mediation that the Union's proposed bargaining unit combining animal control employees and recycling center employees is not appropriate, but that two separate bargaining units consisting of animal control employees and environmental services employees are appropriate. The recycling center director is included in the latter unit. Should the Union not wish to proceed to an election in either of the bargaining units found appropriate, it should notify the Board accordingly. Otherwise, the Board will proceed to run elections in both units.³

DIRECTION OF ELECTION

Elections by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the two bargaining units found appropriate. These elections shall be conducted as early as possible, but not later than thirty (30) days from the date below. The exact time and place will be set forth in the notice of elections to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are identified in the decision. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by Service Employees International Union, Local 50

³ Although the Employer contends that the Union should be required to make a new administrative showing of interest (for each of the units found appropriate), we reject that contention.

The Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the bargaining units found appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 13th day of April, 1993.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Pamela S. Wright
Pamela S. Wright
Employer Member

/s/ Donald N. Kelly
Donald N. Kelly
Employee Member

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ORDER MODIFYING DECISION

On April 13, 1993, this Board issued an election decision in the above captioned matter. In pertinent part, that decision included the Chief Rabies Control Officer and the Kennel Manager in the animal control bargaining unit.

Following the issuance of that decision, both parties jointly requested that the Board modify their decision to exclude the Chief Rabies Control Officer and Kennel Manager from the animal control bargaining unit. The basis for this request was that, unknown to the Board, the parties had agreed at the preliminary conference to exclude the Chief Rabies Control Officer and the Kennel Manager from any bargaining unit found appropriate. The parties' agreement to exclude the Chief Rabies Control Officer and Kennel Manager from any bargaining unit found appropriate was not stated on the record at the January 19, 1993 hearing, therefore, the Board was unaware of same when it issued its decision in this matter.

Based on the parties' agreement, the Board's April 13, 1993 decision is hereby modified to exclude the Chief Rabies Control Officer and Kennel Manager from the

animal control bargaining unit. The remainder of the Board's April 13, 1993 decision is unchanged.

Signed this 10th day of May, 1993.

STATE BOARD OF MEDIATION

SEAL

/s/ Mary L. Gant
Mary L. Gant, Chairman